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DRAFTING OF A DECLARATION ON THE RIGHT AND RESPONSIBILITY OF INDIVIDUALS, GROUPS AND ORGANS OF SOCIETY TO PROMOTE AND PROTECT UNIVERSALLY RECOGNIZED HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS

Report of the working group on its tenth session

Chairman-Rapporteur: Mr. Jan Helgesen (Norway)

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Introduction

1. The Commission on Human Rights, by decision 1985/112 of 14 March 1985, established an open-ended working group to draft a declaration on the right and responsibility of individuals, groups and organs of society to promote and protect universally recognized human rights and fundamental freedoms. This decision was approved by the Economic and Social Council in its decision 1985/152 of 30 May 1985. The Working Group held its first to ninth sessions prior to the forty-second to fiftieth sessions, respectively, of the Commission on Human Rights, its reports to the Commission being contained in documents E/CN.4/1986/40, E/CN.4/1987/38, E/CN.4/1988/26, E/CN.4/1989/45, E/CN.4/1990/47, E/CN.4/1991/57, E/CN.4/1992/53 and Corr.1, E/CN.4/1993/64 and E/CN.4/1994/81 and Corr.1).

2. The Commission, in its resolution 1994/96 of 10 March 1994, decided to continue at its fifty-first session its work on the elaboration of the draft declaration. The Economic and Social Council, in its resolution 1994/11, authorized the open-ended working group to meet for a period of two weeks prior to the fifty-first session of the Commission on Human Rights with a view to continuing the work on the draft declaration.

I. ORGANIZATION OF THE SESSION

A. Opening and duration of the session

3. The tenth session of the Working Group was opened by the Assistant Secretary-General for Human Rights, who made a statement. At the 3rd meeting, on 17 January 1995, the High Commissioner for Human Rights addressed the Working Group. During the session the Working Group held 20 meetings from 16 to 27 January and on 27 February 1995.

B. Election of the Chairman-Rapporteur

4. At its 1st meeting, on 16 January 1995, the Working Group elected Mr. Jan Helgesen (Norway) Chairman-Rapporteur.

C. Participation

5. The representatives of the following States members of the Commission attended the meetings of the Working Group, which were open to all members of the Commission: Australia, Austria, Brazil, Bulgaria, Canada, Chile, China, Colombia, Cuba, Ecuador, Egypt, El Salvador, Ethiopia, Finland, France, Germany, Hungary, Japan, Malaysia, Mexico, Netherlands, Peru, Poland, Republic of Korea, Romania, Russian Federation, Sri Lanka, Sudan, United Kingdom of Great Britain and Northern Ireland, United States of America.

6. The following States, non-members of the Commission, were represented by observers: Argentina, Bolivia, Greece, Iran (Islamic Republic of), Israel, Morocco, New Zealand, Nigeria, Norway, Senegal, Slovakia, South Africa, Sweden, Syrian Arab Republic, Tunisia, Turkey.

7. The following non-governmental organizations in consultative status with the Economic and Social Council were represented by observers at the meetings: Amnesty International, Baha'i International Community, International Commission of Jurists, International Council of Jewish Women, International Federation of Human Rights, International Service for Human Rights, Service, Peace and Justice in Latin America, Lawyers Committee for Human Rights.

8. The African Commission for Health and Human Rights Promoters and the Association for the Prevention of Torture, also non-governmental organizations, were represented by observers.

D. Documentation

9. The Working Group had before it the following documents:

E/CN.4/1995/WG.6/L.1	Provisional agenda
E/CN.4/1994/81 and Corr.1	Report of the Working Group on its ninth session

E. Organization of work

10. The Working Group adopted its agenda, as contained in document E/CN.4/1995/WG.6/L.1, at its 1st meeting, on 16 January 1995.

11. The Working Group subsequently decided to continue the second reading of the draft declaration by considering first its preambular part. The Chairman-Rapporteur stressed that this modality of organizing the work of the Group was adopted solely for technical purposes, and should not be taken to imply any ordering of the relative importance of the preambular and operative parts of the declaration. He recalled the Working Group's decision to delete the title word "Preamble" as well as all references to chapters in the text.

II. CONSIDERATION OF THE DRAFT DECLARATION

A. Preamble

12. The Working Group considered the preamble in second reading at its 1st, 2nd and 3rd meetings on 16 and 17 January 1995. It continued consideration of the fifth preambular paragraph at its 4th, 5th, 16th and 17th meetings on 17, 18, 25 and 26 January 1995.

13. At the Working Group's 1st meeting, some delegations expressed their general views on the preambular part of the draft declaration.

14. The representatives of the United Kingdom, Austria, Australia and the observer for Sweden were in favour of a succinct preamble. The representative of the United Kingdom referred in this respect to the Universal Declaration of Human Rights, the Charter of the United Nations, the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights all of which had preambles shorter than the first reading text of the preamble of the draft declaration.

15. The observer for the Syrian Arab Republic was of the opinion that no shortening of the preamble was needed, but that its wording should be improved. The representative of Cuba reminded the members of the Working Group that the Preamble to the Vienna Declaration and Programme of Action was much longer than that of the draft declaration.

First paragraph of the preamble

16. At the 1st meeting, on 16 January 1995, the representative of Cuba proposed separating the last part of the paragraph starting with the word "stressing" and including it as an independent paragraph in the preamble, while deleting the word "and" after the word "status". That would highlight the importance the draft declaration would attach to international cooperation. He also proposed adding the word "all" before the words "human rights".

17. The observer for Sweden pointed out that there had already been a separate paragraph in the preamble dealing with international cooperation. She said that her delegation could accept the Cuban proposal if the fifth preambular paragraph were deleted subsequently.

18. The representative of Finland noted that the Cuban proposal would detach the reference to the Charter of the United Nations from that to the obligation to respect human rights and would also make the words "this obligation" irrelevant. He proposed deleting from the paragraph the words "such as race, colour, sex, language, religion, political or other opinion, national or social origin, property birth or other status".

19. The representative of Cuba agreed that the reference to the Charter should be retained in the first paragraph.

20. The Chairman-Rapporteur suggested the alternative wording "according to the obligation mentioned above" for the reference to the Charter in the new paragraph proposed by the representative of Cuba.

21. The observer for the Syrian Arab Republic preferred a single reference to the Charter, to follow directly after the word "status", and proposed ending the paragraph proposed by the representative of Cuba with the word "obligation".

22. The representative of Cuba was in favour of there being a reference to the Charter after the words "solemn obligation" in the first part of the paragraph.

23. The representatives of Australia, Austria, the Russian Federation and the United Kingdom, and the observer for Sweden felt that an additional paragraph on international cooperation was not necessary.

24. The representative of the United Kingdom favoured the proposal made by Syria, if any new paragraph were to be added. He also suggested referring to the Charter with the words: "in accordance with", rather than with the words: "according to", to use language similar to the Charter. The observer for the Syrian Arab Republic supported that suggestion.

25. The representatives of Australia and Austria voiced their preference for organizing the preamble using one paragraph per concept and naming each concept only once. As a consequence, they were in favour of deleting the second reference to international cooperation in the preamble.

Second paragraph of the preamble

26. At the same meeting, the observer for Sweden proposed merging the second, third and fourth paragraphs into a single, new second paragraph using the following wording:

> "Recalling the importance of the observance and respect for the provisions of the Charter of the United Nations, the Universal Declaration of Human Rights and other human rights instruments adopted within the United Nations, as well as other international efforts, including at regional level, to promote and protect universal respect for human rights and fundamental freedoms."

27. The representative of the United States supported that proposal, subject to the simplification of language elsewhere in the draft declaration.

28. The representative of Cuba found the exclusion, in the Swedish proposal, of the reference to the purposes and principles of the Charter of the United Nations unacceptable. The representative of Cuba was against merging the second, third and fourth paragraphs and proposed substituting the word "all" for the words "[universally recognized]". The representative of the United Kingdom objected to the insertion of the word "all" as proposed by Cuba.

29. The observer for Norway suggested, in view of the Cuban objection to the Swedish merger proposal, deleting the words "the provisions of" from that proposal. The representative of Finland supported that suggestion.

30. The delegations of China and the Syrian Arab Republic were in favour of retaining the reference to the purposes and principles of the Charter, as contained in the first reading text of the paragraph.

31. The representative of China noted that the reference to the purposes and principles of the Charter merited a separate paragraph. In addition, he proposed substituting "Reaffirming" for "Recalling" as the paragraph's opening word.

32. The representative of Finland supported the thrust of the Swedish proposal to merge the second, third and fourth paragraphs. He was in favour of adding to that proposal an explicit reference to the two International Covenants on Human Rights, as well as adding the words "instruments and" before the word "efforts", bearing in mind the importance of the European Convention on Human Rights.

33. The representative of Chile proposed adding, at the end of the paragraph, the words "as well as at regional level", and to delete the fourth preambular paragraph altogether.

Third and fourth paragraphs of the preamble

34. No comments or suggestions were made by the Working Group on the third and fourth preambular paragraphs as adopted at first reading.

Fifth paragraph of the preamble

35. At the same meeting, the representative of the United States proposed the deletion of the reference to international cooperation, in view of the Cuban proposal on the splitting of the first paragraph and in view of the context of the paragraph, which was principally the acknowledgement of the importance of the work of human rights defenders. He also proposed deleting the reference to different types of human rights violations and ending the paragraph with the word "individuals" in line 4.

36. The representative of Australia supported the United States proposal and argued that any list of human rights violations would of necessity be incomplete, would moreover create the impression that some rights were more important than others and would therefore be contrary to the fundamental conclusion of the Vienna Declaration and Programme of Action that human rights were universal, indivisible, interdependent and interrelated. The observers for Sweden and Norway and the representative of Chile shared the view of the representative of Australia and stated that if any such list were to be included at all in the paragraph, it would have to be made more balanced and complete.

37. The representative of Cuba was of the opinion that the first reading text of the fifth paragraph was the best one of the preamble and had to be retained in its current wording. The delegations of the Syrian Arab Republic and China were also in favour of the retention of the paragraph, which they considered to be of the utmost importance, in its current wording. The observer for the Syrian Arab Republic was of the opinion that the fifth paragraph defined rights and obligations in a balanced way and indicated precisely what human rights violations should be countered. The representative of China felt that the inclusion of a list of human rights violations was unavoidable because it clarified further interpretation of the draft declaration as a whole.

38. At the 2nd meeting, on 16 January, the Working Group continued its consideration of the fifth preambular paragraph at second reading.

39. The representative of Germany referred to the German proposal made at the eighth session of the Working Group (E/CN.4/1993/64, para. 129 and annex III), and further proposed replacing the words "all mass, flagrant or systematic violations of the human rights and fundamental freedoms of peoples and individuals, such as those resulting from" by the words "all forms of violations of human rights and fundamental freedoms, including those that may result from".

40. The representative of Cuba referred to the Cuban proposals relating to the fourth and fifth paragraphs of the preamble made at the eighth session of the Working Group (E/CN.4/1993/64, para. 141 and annex III), stating, however, that the Cuban delegation was prepared to accept the fifth paragraph as it stood at first reading.

41. The observers for International Service for Human Rights and Sweden and the representatives of the United States, the United Kingdom, the Netherlands and the Russian Federation considered that the list of violations of human rights contained in the fifth paragraph of the preamble was incomplete and were in favour of the deletion of that part of the paragraph.

42. The observer for the Syrian Arab Republic was of the opinion that the preamble had been elaborated in a balanced manner and that any changes to it would be inappropriate.

43. The representative of Austria proposed including a reference to the importance of international cooperation in the third paragraph of the preamble and deleting the fifth paragraph altogether.

44. The observers for Amnesty International and International Service for Human Rights felt that if the fifth paragraph of the preamble were to be deleted, the acknowledgement of the valuable work of individuals, groups and associations should be included elsewhere.

45. The observer for Norway proposed deleting the words "mass, flagrant or systematic".

46. The representative of the United States argued that the language of the fifth paragraph was factually wrong and should include a more accurate, balanced and legally correct description of violations of human rights, if at all.

47. The representative of the Russian Federation felt that in this instance, there was no balance or link between the preambular and the operative parts of the draft declaration. He noted that the operative part neither referred to the elimination of violations of human rights, nor contained a prescription of what types of violations human rights defenders should be concerned with, while in the fifth preambular paragraph part an attempt was made to address that matter.

48. The representative of Mexico proposed adding the word "further" before "stressing" in the second part of the first preambular paragraph.

49. At the 5th meeting, on 18 January 1995, the Working Group continued its consideration of the fifth preambular paragraph at second reading.

50. The Chairman-Rapporteur, following informal consultations, concluded that the mere reproduction of part I, paragraph 30 of the Vienna Declaration and Programme of Action in the fifth paragraph of the preamble would not be acceptable to all delegations, in spite of the fact that the fifth paragraph contained agreed language from that declaration. On the other hand, a consensus text would require a reference to some kind of list containing violations of both collective and individual human rights.

51. At the 16th meeting, on 25 January 1995, the Working Group continued its consideration of the fifth preambular paragraph at second reading.

52. The representative of China proposed the following text which, in the view of his delegation, could serve as a compromise text for the fifth preambular paragraph:

> "Acknowledging the important role of international cooperation for and the valuable work of individuals, groups and associations in contributing to the elimination of all violations of the human rights and fundamental freedoms of peoples and individuals, and obstacles to their attainment inter alia, including those resulting from apartheid, all forms of racism, colonialism, foreign domination or occupation, aggression or threats to national sovereignty, national unity or territorial integrity, and from refusal to recognize the right of peoples to self-determination; the right of every people to exercise full sovereignty over its wealth and natural resources in accordance with applicable international law, and the right to development, as well as the violations including torture and cruel, inhuman and degrading treatment or punishment, summary and arbitrary executions, disappearances, arbitrary detentions, poverty, hunger and other denials of economic, social and cultural rights, religious intolerance, terrorism, discrimination against women and lack of the rule of law."

53. The observer for Greece felt that the Chinese proposal was rather overloaded. She proposed substituting a comma for the semi-colon, after the word "determination" and replacing replace the words "the violations including" by "those resulting from".

54. The observer for Sweden supported the Greek proposal, but felt that the best solution would be to delete the remaining part of the paragraph after the word "attainment".

55. The representative of Mexico supported the proposal of the representative of China but proposed deleting the words "in accordance with applicable international law".

56. The representative of the United States said that if there was a willingness to accept the text proposed by the representative of China as a basis for the solution of all problems relating to the fifth preambular paragraph, then the Working Group should also examine how that text related to other parts of the preamble.

57. The representative of the Netherlands pointed out that a "listing" of rights and violations could never be complete and supported the Swedish proposal to end the paragraph after the word "attainment". That view was shared by the observers for Norway, the International Federation of Human Rights, the International Service for Human Rights, the International Commission of Jurists and Amnesty International, who pointed out that some important concepts were missing in the list proposed by the representative of China.

58. The observer for the Syrian Arab Republic expressed his preference for the original text of the fifth preambular paragraph, but he could also accept the proposal made by the representative of China. However, he proposed that "foreign domination or occupation" should read "foreign occupation or domination".

59. The Chairman-Rapporteur then proposed that work towards achieving a consensus text should be continued in informal consultations on the basis of the proposal put forward by the representative of China, taking into account the comments made by all delegations on that proposal.

60. At the 17th meeting, on 26 January 1995, the Working Group continued its consideration of the fifth preambular paragraph at second reading.

61. The representatives of France, Chile, Canada, Australia, Mexico, the Netherlands and the observer for Argentina expressed their objection to any listing of possible human rights violations. They considered that the main focus of the paragraph was to highlight the role of non-governmental organizations in achieving respect for all human rights and fundamental freedoms.

62. The representative of Canada proposed an amended version of the Chinese proposal introduced at the 16th meeting, reading as follows:

> "Acknowledging the important role of international cooperation and the valuable work of individuals, groups and associations in contributing to respect for, and effective implementation of, all human rights, and fundamental freedoms of peoples and individuals."

63. The representatives of France and Australia submitted that if any list had to be established for the purpose of consensus, it would have to be in conformity with part I, paragraph 30 of the Vienna Declaration and Programme of Action.

64. The delegations of Australia and Argentina supported the Canadian proposal.

65. The representative of Mexico proposed amending it by substituting the words "universally recognized" for "all".

66. The representative of the Netherlands supported the idea behind the Canadian proposal, but proposed the following wording:

> "Acknowledging the valuable work of individuals, groups and associations in contributing to the elimination of all violations that constitute serious obstacles to the full enjoyment of all human rights as well as the importance of international cooperation in this respect."

67. The Chairman-Rapporteur suspended consideration of the fifth paragraph of the preamble.

Sixth paragraph of the preamble

68. No comments or suggestions were made by the Working Group with regard to the sixth paragraph of the preamble as adopted at first reading.

Seventh paragraph of the preamble

69. At the 2nd meeting, on 16 January 1995, the representatives of the United Kingdom and the United States of America referred to the formulation contained in part I, paragraph 5 of the Vienna Declaration and Programme of Action. A proposal by the representative of the United States to follow, in the seventh paragraph of the preamble, the formula adopted by the World Conference was accepted by the Working Group.

Eighth paragraph of the preamble

70. At the same meeting, with regard to the eighth paragraph of the preamble, the Chairman-Rapporteur asked whether the deletion of the words "[universally recognized]" and their replacement by the word "all" would be acceptable to all delegations.

71. The representative of the United States said that while the United States delegation did not object to deleting the words "universally recognized", it was reluctant to include the word "all" in numerous places in the draft declaration.

72. The representative of the Netherlands referred to the mandate of the Working Group and to the title of the draft declaration, both of which contained the expression "universally recognized", and thought it necessary to discuss whether the Working Group could modify its mandate.

73. The representative of the United Kingdom said that if the word "all" was inserted, then his delegation would insist on retaining the words "universally recognized," although otherwise it would favour the deletion of the expression.

74. The representative of Mexico felt that the Working Group should maintain the wording as contained in the mandate given to the Group by the Commission on Human Rights.

Ninth paragraph of the preamble

75. At the same meeting, the observer for Sweden proposed an alternative version of the ninth preambular paragraph, reading as follows:

> "Acknowledging the important role carried out by individuals, groups and associations to promote and protect universal respect for human rights and fundamental freedoms and their valuable work at the national and international levels towards the effective elimination of various kinds of violations of human rights and fundamental freedoms".

76. The representative of Cuba proposed adding, at the end of the ninth paragraph, the following text:

> "in the framework of national legislation and international legal obligations freely entered into by States in this field".

77. The delegations of the United States and Chile and the observers for International Service for Human Rights and Amnesty International expressed their difficulties in accepting the Cuban proposal, which they considered to be limiting, while the observer for the Syrian Arab Republic and the representative of the Sudan supported the proposal of Cuba.

78. The representative of the Russian Federation proposed deleting the paragraph altogether. That proposal was opposed by the observer for the Syrian Arab Republic.

First to fourth and sixth to ninth paragraphs of the preamble

79. At the 3rd meeting, on 17 January 1995, the Chairman-Rapporteur introduced documents E/CN.4/1995/WG.6/CRP.1 and CRP.2, containing his proposals for the first to fourth and sixth to ninth preambular paragraphs, based on the discussions held during the 1st and 2nd meetings. (The text of these documents is contained in annex II to the present report).

80. The Working Group agreed to use his proposals as a basis for discussions on the preamble, on the understanding that the fifth preambular paragraph would be considered separately at a later stage.

81. The representatives of Austria, Australia, Chile, the Netherlands and the Russian Federation expressed their preference for document CRP.1.

82. The observer for the International Commission of Jurists and the representative of the United Kingdom expressed a preference for the ordering of the paragraphs in CRP.2.

83. The representative of Austria proposed adding, in the first preambular paragraph of CRP.1, after the words "the importance of", the words "the Vienna Declaration and Programme of Action and". He also proposed inserting a new preambular paragraph after the third preambular paragraph to read as follows: "Aiming at promoting and protecting human rights and fundamental freedoms". Some participants in the working group felt that further additions might complicate the text unnecessarily.

84. The representative of the Russian Federation proposed, in CRP.1, in the first preambular paragraph deleting the words "the observance" and replacing the word "purposes" by "rights"; in the fourth preambular paragraph deleting the words "the right and"; and replacing, in the sixth preambular paragraph, the words "all members of the international community" by the word "States".

85. With regard to the deletion of the words "the observance", the representative of China felt that it was not acceptable because it would weaken the content of the first preambular paragraph.

86. The representatives of Chile, the Netherlands, the United Kingdom and the United States, as well as the observers for Norway, Sweden and International Service for Human Rights, were of the opinion that the words "rights and" should be retained in the fourth preambular paragraph.

87. The representative of Australia and the observers for Sweden and Norway expressed their wish to retain "the members of the international community" in the sixth preambular paragraph.

88. The representatives of Cuba and China pointed out that the preamble should be discussed in its totality, including the fifth preambular paragraph.

89. The representative of Cuba proposed merging the second, third and fourth preambular paragraphs, to read as follows:

> "Reaffirming the importance of the Universal Declaration of Human Rights and the International Covenants on Human Rights, as well as other human rights instruments adopted within the United Nations system and at the regional level, for the promotion of universal respect and the observance of all human rights and fundamental freedoms."

90. The proposal was supported by the delegations of Australia, Mexico, Norway, Sweden and the United Kingdom.

91. The representative of Cuba also proposed inserting the word "all" before the words "human rights" in all preambular paragraphs. The proposal was supported by the representative of China, but opposed by the delegations of the United Kingdom, Norway and Austria. In particular, the representative of the United Kingdom pointed out that part I, paragraph 30 of the Vienna Declaration and Programme of Action, addressing the interdependence and interrelatedness of human rights, did not include the word "all". The representative of Austria felt strongly that the word "all" was not precise enough and was not to be applied in all cases without distinction. He added that should a qualificative term be needed, "universally recognized" would be preferable.

92. The observers for Sweden and the International Commission of Jurists expressed their preference for a shorter and more focused preamble.

93. Many delegations expressed the wish that the concept of international cooperation be addressed in one preambular paragraph and should not be repeated in several different ones.

94. At the 19th meeting, on 27 January 1995, the Chairman-Rapporteur informed the Working Group that any further informal consultations on the preamble were not needed since no consensus could be established at that stage, although extensive informal consultations had been carried out.

B. Chapter I

Article 1

95. The Working Group considered article 1 of chapter I at its 4th and 5th meetings, on 17 and 18 January 1995.

96. At its 4th meeting, the Working Group discussed the expression "individually and in association with others". Following informal consultations, the representative of the United States proposed deleting the words "with others". That proposal was accepted by the Working Group.

97. The representatives of France and Mexico pointed out that the translation into French and Spanish of the words "in association" did not reflect properly the meaning of that expression in the English language. The representative of Mexico proposed using the formulation "individually and collectively". The representative of France proposed that the expression in English "in association" be always translated into French as "en association avec d'autres".

98. The Chairman-Rapporteur asked whether the deletion of the words "universally recognized" contained in square brackets would be acceptable to all delegations.

99. The observer for Sweden was in favour of the deletion of the words in square brackets.

100. At its 5th meeting, on 18 January 1995, the Working Group adopted the article at second reading, deleting the words "with others" and "[universally recognized]" and, at the suggestion of the observer for the International Commission of Jurists, deleting the words "as much" in view of their redundancy. The text of article 1 as adopted at second reading read as follows:

> "Everyone has the right, individually and in association, to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels. Each State shall adopt such legislative, administrative and other steps as may be necessary to ensure that the rights and freedoms referred to in this declaration are effectively guaranteed."

Article 2

101. The Working Group considered article 2 of chapter I at its 5th meeting, on 18 January 1995.

102. The Chairman-Rapporteur suggested deleting the words "[universally recognized]" and "with others" for reasons of consistency with article 1 of chapter I as adopted at second reading.

103. The representative of Cuba proposed, first, adding, after the word "protect" the phrase "and ensure the full realization of all", second, adding the word "economic" after "social", and third, adding the word "all" before the words "these rights".

104. The representative of the United Kingdom supported the Chairman's proposal and was in favour, in view of the Cuban proposal, of not qualifying the word "conditions" at all, deleting the words "social and political".

105. The representative of Mexico suggested qualifying "conditions" by adding the word "necessary".

106. The representative of the United States could not accept a reference to the creation of economic conditions as a prerequisite for human rights protection. He supported the United Kingdom proposal not to qualify "conditions", and could also accept the Mexican proposal if such language should prove to be necessary in order to reach a consensus.

107. The representative of Cuba could support the Mexican proposal if the word "all" were added before the word "necessary".

108. That language was accepted by the Working Group. The Chairman-Rapporteur invited comments on the first proposal of the representative of Cuba.

109. The representative of Austria said that the word "all" had to be qualified by adding the words "universally recognized".

110. The representative of the United States referred to article 2.1 of the International Covenant on Civil and Political Rights and proposed substituting the phrase "and to ensure to all individuals within its territory" for the first Cuban proposal. He was of the opinion that the addition of the words "full realization", as proposed by the representative of Cuba, would take the working group beyond the obligation established by article 2.1 of the International Covenant on Civil and Political Rights and, consequently, would be beyond the working group's mandate.

111. The representative of Canada noted that the human rights Covenants referred to different types of obligations and suggested, in order to avoid any confusion on the matter and to address economic, social and cultural rights, as well as civil and political rights, using language taken from the Charter of the United Nations. The representative of Romania supported that proposal.

112. The observer for Norway suggested substituting the words "promote, protect and implement" for the first Cuban proposal.

113. The observer for Nigeria favoured the use of the word "realization" since it pertained especially to economic, social and cultural rights and to the right to development.

114. The representative of Romania suggested that substituting the phrase "protect, promote and ensure the full realization of all" for the first Cuban proposal might meet the concerns of the delegations of Cuba and Nigeria.

115. Upon the invitation of the Chairman-Rapporteur, delegations responded to the third Cuban proposal. The representative of the United Kingdom remarked that the meaning of "all", as proposed by the representative of Cuba, would depend upon the text of the article, for which as yet no consensus language had been established. He suggested the phrase "to enjoy them in practice" as a first step towards achieving such a consensus. The representative of Canada preferred the phrase "all human rights and fundamental freedoms" for the sake of consistency with language found elsewhere in the draft declaration.

116. The representative of Cuba could accept the proposal made by the representative of the United Kingdom if the phrase read "all of them".

117. The Chairman-Rapporteur noted that consensus language was not within reach of the working group. He explained that the function of the article was simply to state the responsibility of States, which was not denied by any delegation. He added that the working group had not been created to discuss human rights in general, nor to establish any new human rights or types of

state obligations. He proposed, as a compromise, substituting the word "all" for "[universally recognized]"; substituting the word "necessary" for the words "social and political"; and inserting the words "each of" before "these rights".

118. The observer for Nigeria stated that the Chairman-Rapporteur's proposal did not meet his concerns.

119. The representative of China agreed with the Chairman-Rapporteur's proposal, and suggested substituting the word "all" for the words "the necessary" and adding, after the word "guarantees", the phrase "in social, economic, political as well as other fields".

120. The representative of Nigeria noted that the Chinese proposal also did not meet his delegation's concerns.

121. The representative of the Netherlands supported the Chairman-Rapporteur's compromise proposal. In view of the objection to it by the observer for Nigeria, he suggested adding the words "remove obstacles or to" before the word "create".

122. The observer for Nigeria remarked that that suggestion could not satisfy his concerns either. He proposed splitting the article into two separate paragraphs. The first one should include a reference to "promote, protect and respect". The second one should read as follows:

> "2. Each State has a prime responsibility to ensure the realization of all human rights and fundamental freedoms, inter alia, by creating a conducive economic, social and cultural environment at the national as well as equitable economic relations and a favourable economic environment at the international level".

123. The representative of Cuba saw merit in both the Chinese and Nigerian proposals. He stated that there was something missing from the draft declaration that might be found in the Nigerian proposal.

124. The representative of Chile said that whereas States were under the obligation to establish conditions to make respect for human rights possible, that line of reasoning should not be taken to imply that a lack of any type of development might ever be invoked as an excuse for violations of human rights.

125. The observer for International Service for Human Rights expressed support for the Chairman-Rapporteur's appeal to the Working Group to keep to its mandate and not to debate human rights in general. He recalled that during and after the process leading up to the adoption of the Vienna Declaration and Programme of Action, numerous human rights defenders had been arrested. He also noted that the Vienna Declaration and Programme of Action was not a legally binding instrument and, therefore, might not merit all the consideration given to it by the working group.

126. The representative of the United States remarked that the Working Group was not concerned with redefining human rights, yet spent all of its time on that subject. Consequently, he felt that the working group was moving in the wrong direction.

127. The working group continued its consideration of article 2 of chapter I at its 6th meeting, on 18 January 1995.

128. The Chairman-Rapporteur proposed that the Working Group consider a shorter version of article 2, reading as follows:

> "Each State has a prime responsibility and duty to protect, promote and implement all human rights and fundamental freedoms."

The Chairman made that proposal on the understanding that all international instruments, including the declaration under consideration, must contain an operative clause requesting States to implement the provisions of the instrument.

129. After informal discussions, the Chairman-Rapporteur put forward a proposal to the working group consisting of the following three elements: first, that the version of article 2 referred to above be adopted; second, that the discussion on article 1 be reopened and the second sentence be deleted; and third, that an article "X" be elaborated, which would contain a clear commitment by States to implementing the declaration.

130. The representative of the United States stressed that consensus on the Chairman's proposals was dependent on the ability of the working group to agree on such a new clause. If not, his delegation would revert to articles 1 and 2 as they appeared at first reading.

131. The observer for Sweden also emphasized the absolute necessity, when creating a new legal instrument, to include a reference to state obligation towards its implementation.

132. The representative of Canada stressed the importance of the second part of article 2 and expressed his reluctance with regard to reopening the discussion on the already adopted article 1.

133. The representative of Austria supported the delegations of Sweden and Canada with reference to a clause on state responsibility. He also said that his delegation had serious reservations about including the word "all" in article 2, as some countries might not have ratified all international human rights instruments.

134. The representatives of the United Kingdom, Mexico, Australia, Chile and the observers for Nigeria, Norway and the International Commission of Jurists associated themselves with the previous speakers, pointing out the importance of the third element of the Chairman-Rapporteur's proposal and reminding participants that a consensus would be needed to reopen discussion on already adopted paragraphs. The observer for the International Commission of Jurists also expressed the view that articles 1 and 2 together would require States to ensure that all rights referred to in the draft declaration were effectively guaranteed in practice.

135. The representative of Chile proposed deleting article 2 and making article 1 more comprehensive by inserting after "each State" the words "having a prime responsibility and duty to implement all human rights and fundamental freedoms shall".

Articles 1, 2 and "X"

136. The Working Group considered articles 1 and 2, as well as an additional article "X", at its 7th meeting, on 19 January 1995.

137. The Chairman-Rapporteur introduced his proposals as contained in document CRP.3 (see annex II).

138. The representative of Cuba felt that his earlier proposals and those of other delegations were not adequately reflected in the Chairman-Rapporteur's proposals. With regard to article "X", the content was acceptable, but its wording was unbalanced.

139. The observer for the International Commission of Jurists suggested the inclusion of the word "all" before the words "the rights" in article "X".

140. The representative of the United States expressed his reluctance with regard to reopening the negotiations on the adopted article 1. In a spirit of compromise, he would be willing to go along with the proposal of the Chairman-Rapporteur.

141. The Chairman-Rapporteur then invited the working group to adopt his proposal, with the substitution of the second sentence of the first reading text of article 1 for that of article "X" in document CRP.3.

142. The representative of Cuba felt that the issue of a reference to the general obligations of States to implement human rights should be resolved before the proposal of the Chairman-Rapporteur was adopted.

143. The representative of China was not in a position to accept the proposal of the Chairman-Rapporteur, which, in his view, upset the balance on the obligation of States that had been achieved in the first reading texts of articles 1 and 2.

144. The observer for Norway proposed, as a possible solution, deleting article 2, and maintaining article 1 as adopted at first reading.

145. The representative of Canada agreed with the observer for Norway that article 2 was unnecessary, but indicated that his delegation could go along with it, in the wording contained in document CRP.3.

146. The representative of the United Kingdom expressed his support for the views of the delegations of Norway and Canada on article 2. His delegation could go along with the wording in document CRP.3, as amended by the Chairman-Rapporteur. He suggested that, if there was no consensus, the text of article 1 as it had been adopted should be maintained.

147. The representative of Cuba expressed the view that article 2 was critical to the draft declaration, as was a reference to "conditions", without which the draft declaration would create more problems than it resolved.

148. The representative of the Netherlands expressed support for the views of the Chairman and the representative of Canada that the draft declaration is not the appropriate place to deal with the question of State responsibility.

149. The representative of Chile could envisage a consensus text on article 2/CRP.3, when formulated in conformity with the second part of the first reading text of article 2. He explained that his delegation did not oppose a reference to "conditions" as long as human rights were respected, irrespective of those conditions. The observer for Argentina supported this view.

150. At the same meeting, after informal consultations had been held, the representative of the United Kingdom introduced what he felt could be a compromise text of article 2, contained in CRP.4. The working group adopted text of article 2 of chapter I at second reading. It read as follows:

> "Each State has a prime responsibility and duty to protect, promote and implement all human rights and fundamental freedoms, inter alia by adopting such steps as may be necessary to create all conditions necessary in the social, economic, political as well as other fields and the legal guarantees required to ensure that all persons, individually and in association, are able to enjoy all these rights and freedoms in practice."

C. Chapter II

Article 2

151. The working group considered article 2 of chapter II at its 6th, 7th, 9th, 13th and 18th meetings, on 18, 19, 20, 24 and 26 January 1995.

152. At the 6th meeting, on 18 January 1995, the Chairman-Rapporteur proposed replacing, in the chapeau, the words "as well as together with others" by the words "and in association"; and replacing, in paragraph (b), the square brackets and the words therein by the word "all".

153. The representative of China reintroduced his proposal, put forward the previous year (E/CN.4/1994/81, annex II, CRP.3), which read as follows:

> "(b) To publish, impart or disseminate to others views, information and knowledge of human rights and fundamental freedoms under guidance of applicable international instruments."

154. The representative of Chile suggested replacing, in article 2 (a), the words "and hold" by "hold and use".

155. The representative of Austria said that his delegation would have no problem with the word "all" in that context. Furthermore, he was of the opinion that the concerns of the Chinese delegation would be covered in articles 1 and 2 of chapter V, which had already been adopted. That point of view was shared by the representatives of the United Kingdom, Australia and Mexico, whereas the observer for the Syrian Arab Republic supported the proposal made by the representative of China which seemed to him not to limit the scope of article 2 of chapter II.

156. The representative of Mexico suggested adding the following at the end of paragraph (b): "taking into account the provisions of the United Nations on this matter".

157. The Chairman-Rapporteur stressed that he felt hesitant to put limitations in every article, as they were already covered in chapter V and were intended to cover all articles of the declaration.

158. The representative of Cuba proposed including, in the chapeau of article 2, a reference to domestic legislation and to international legal obligations. He also proposed, in paragraph (a), deleting the word "full".

159. The representative of the United States stressed that the word "full" was very important in the context and should be retained. With reference to the Chinese proposal, he suggested that language from article 19 of the Universal Declaration of Human Rights could be used to meet his concerns.

160. The representative of China reiterated that his proposal was not intended to impose a limitation on article 2.

161. The working group continued its consideration of article 2 at its 7th meeting, on 19 January 1995.

162. The representative of the United States introduced a compromise text for paragraph (b) reading as follows:

> "As provided in applicable international human rights instruments, freely to publish, impart or disseminate to others views, information and knowledge of human rights and fundamental freedoms."

That this text took into account the proposal put forward the previous year by the representative of China (E/CN.4/1995/81, annex II, CRP.3).

163. The representative of Cuba proposed the inclusion of the word "all" before the words "human rights" in paragraph (b). The observer for the Syrian Arab Republic proposed the deletion of "full" in paragraph (a), expressing the view that that wording might risk being too inclusive.

164. After informal consultations, the Chairman-Rapporteur noted that those amendments might be acceptable to the working group. He stated for the record that the inclusion of the word "all" in paragraph (b) did not entail the obligation of individuals always to be concerned about all human rights. He invited the working group to adopt article 2, as amended by the delegations of Cuba and the Syrian Arab Republic.

165. The representative of Cuba insisted on his proposal on new wording for the chapeau of the article, as contained in CRP.5 (see annex II).

166. On that basis, the Chairman-Rapporteur noted the absence of consensus on article 2 and suspended its consideration.

167. The working group continued its consideration of article 2 of chapter II at its 13th meeting, on 24 January 1995.

168. The representative of Cuba referred to the previous debate during which it was proposed to delete the word "full" and to substitute the word "all" for "these" in paragraph (a) and to substitute the word "all" for "[universally recognized]" in paragraph (b). He further proposed replacing, in paragraph (a), the words "these rights and freedoms" by "all human rights and fundamental freedoms".

169. The representative of China reiterated the proposal to substitute the phrase "As provided in applicable international human rights instruments freely to" for the opening word "To" of paragraph (b). The observer for Greece felt that that proposal could also apply to paragraph (a).

170. The working group continued consideration of article 2 of chapter II at its 18th meeting, on 26 January 1995.

171. The representative of Australia introduced the following possible consensus proposal for a new paragraph (c), arrived at during informal consultations, on the understanding that the text of the chapeau would not be changed:

> "to study, discuss, form and hold opinions on the observance, both in law and practice, of these rights and freedoms, and, through these and other appropriate means, to draw public attention to these matters".

172. The representative of Cuba insisted on his delegation's proposal relating to the chapeau of the article, as contained in CRP.5.

173. The representative of Mexico was in favour of retaining a short chapeau and proposed substituting the word "lawful" for "appropriate" in the proposed paragraph (c).

174. A number of participants indicated that they were not altogether satisfied with the compromise text introduced by the representative of Australia, but that they were willing to support it in a spirit of compromise.

175. The representative of the United Kingdom requested the Chairman-Rapporteur to ascertain if, apart from the Cuban delegation, any other delegation insisted on an extended chapeau, as proposed by the Cuban delegation in CRP.5.

176. No other delegation insisted.

177. The Chairman-Rapporteur concluded that, given the position of the Cuban delegation, there would be no point in the working group continuing its work on the article.

178. The representative of Cuba reiterated his delegation's position that the article needed a reference to the purposes and principles of the Charter of the United Nations and to domestic legislation. In reality, restrictions existed; there should be a specific reference to them in the article.

179. At the same meeting, after informal consultations, the representative of Australia revised his proposal for a new paragraph (c) by replacing the words "these rights and freedoms" by "all human rights and fundamental freedoms" and by inserting, before the word "means", the words "[and lawful]".

180. The representative of Cuba said that his delegation was prepared to revise its proposal as contained in CRP.5 by deleting the first part until the word "within", but insisted that the remaining part should be added at the end of the chapeau to article 2.

181. The Chairman concluded that no further agreement could be reached on article 2 of chapter II.

Article 3

182. At its 8th meeting, on 19 January 1995, the Working Group took up consideration of article 3 of chapter II.

183. The Chairman-Rapporteur proposed deleting the words "with others" for reasons of consistency, as well as deleting the square brackets and retaining the text contained therein.

184. The representatives of China and Mexico and the observer for the Syrian Arab Republic were in favour of the deletion of the words contained in square brackets. The representative of Cuba was of the opinion that article 3 served no purpose for the declaration and proposed that it be deleted, whereas the representatives of Austria, Chile and the Netherlands and the observers for Sweden, Amnesty International and the International Commission of Jurists emphasized the crucial importance of that article for the declaration and supported the Chairman-Rapporteur's proposal to retain the words in square brackets and to remove the brackets.

185. The observer for the International Commission of Jurists suggested replacing the word "study" by the word "evaluate" or "monitor" and to include a reference to the right to hold as well as to form opinions. Those proposals were supported by the delegations of Austria and Sweden.

186. The representative of Chile proposed the following alternative formula for the words contained in square brackets: "in one's own country and internationally".

187. The representative of the Netherlands proposed replacing the word "study" by the word "monitor", along the same lines as the proposal by the International Commission of Jurists.

188. The representative of Mexico suggested that article 3 be moved to become a new article 2 (c) and that the beginning of the article until the words "to study" be deleted.

189. The Working Group continued consideration of article 3 at its 13th meeting, on 24 January 1995.

190. The representative of Cuba reiterated his earlier proposal to delete the article, since it did not add anything to the draft declaration.

191. The representative of Mexico reiterated the position of his delegation that the words in square brackets should be deleted.

192. The representative of Greece proposed repositioning article 3 as article 2 (c), since its content elaborated on the previous article.

193. The observer for Amnesty International supported the Greek proposal and was in favour of maintaining the wording in square brackets, as were the observer for the International Commission of Jurists and the representative of the Netherlands.

194. The observer for the International Commission of Jurists proposed substituting the words "to draw" for "to solicit" and the word "monitor" for "study". He also proposed adding the words ", hold and publish" after the word "form".

195. The representative of the Netherlands expressed support for the substitution of the words "draw" and "to monitor". He also suggested that article 3 could be moved to become a new paragraph (b) of article 2; the old paragraph (b) would then become paragraph (c).

196. The observer for the Islamic Republic of Iran supported the Cuban proposal to delete article 3, but said that he could also agree to deleting only the words in square brackets, for the sake of consensus.

197. After informal consultations, the representative of Australia read out the following possible compromise text of a new paragraph 2 (c) that included elements from article 3:

> "To study, discuss, form and hold opinions on the observance, both in law and practice, of these rights and freedoms, and, through peaceful means, to draw public attention to these matters."

198. The representative of the United States expressed doubts as to whether the mere repositioning of texts could solve all the problems of the article.

199. The representative of the Netherlands welcomed the Australian compromise text as a useful basis for further debate, but expressed concern that, as yet, no consensus had been reached on the text of the chapeau to article 2.

200. The representatives of Romania and the United Kingdom and the observers for Norway and the International Commission of Jurists said that they could agree to the compromise text as proposed by Australia, if the issue of the text of the chapeau to article 2 could be approached with similar flexibility.

201. The representative of Cuba noted that the proposal read out by the representative of Australia did not represent a consensus among all delegations. His delegation judged the last part of it to be confusing and wished to see the linkage of that text with the chapeau to article 2.

202. On that basis, the Chairman-Rapporteur noted the absence of consensus on the text and suspended its consideration.

Article 5

203. At its 14th meeting, on 24 January, the working group considered article 5. The representative of Romania proposed the addition of a new subparagraph to paragraph 3 of article 5. That proposal was circulated as CRP.13 (see annex II). The representative of Romania also suggested that that new subparagraph could be included elsewhere in the draft declaration.

204. The Chairman-Rapporteur reminded the working group that article 5 of chapter II had already been adopted at second reading at the ninth session of the working group, in 1994. Should the working group agree to the proposal of Romania, it would then have to take a decision regarding reopening the discussion of the text adopted at second reading.

205. Many participants stated that they would have no difficulty in accepting the substance of the Romanian proposal, which they found worthy of consideration, but expressed their reluctance with regard to reopening discussion of the second reading text of article 5.

206. The representative of the United Kingdom suggested that the working group could discuss the substance of the Romanian proposal and, if consensus was achieved, the group might decide to reopen discussion of article 5 for the sole purpose of inserting the text of the proposal.

207. In that connection, the observer for the International Commission of Jurists suggested that, in order to avoid reopening discussion of article 5, the Romanian proposal, if accepted, could be included as a new article 6 of chapter II, or as paragraph 4 of article 5. He also considered that the Romanian proposal's focus on the educational roles of non-governmental entities warranted a separate article or paragraph, and should not be added to existing paragraph 3 of article 5, which spotlighted human rights training for the police and military.

208. The representative of Mexico and the observer for Norway felt that the language of the proposal was rather descriptive and it could therefore be better placed in the preamble.

209. After an exchange of views on the possible placing of the Romanian proposal, the Chairman-Rapporteur concluded that there was a strong reluctance to reopen discussion of the article already adopted at second reading. However, no delegation opposed discussing the substance of the proposal, which could be considered as article "X" and its placing determined at a later stage.

210. At the same meeting, the representative of Romania revised the proposal of his delegation to read as follows:

> "Individuals, non-governmental organizations, groups and institutions have an important role in carrying out educational, training and research activities in the field of human rights, directed at furthering understanding, tolerance, peace and friendly relations among nations and amongst all racial and religious groups."

211. The representatives of the United States and China expressed their preference for the original text of the Romanian proposal. The representative of the United States proposed reinstating the phrase at the beginning of the text and replacing the words "directed at" by "and in".

212. The observer for Amnesty International proposed adding, after "human rights", the words "and fundamental freedoms," and replacing the words "in this area" by "in these areas". He also expressed his preference for the deletion of the last part of the proposal, beginning with the words "directed at". That view was shared by the observer for Norway.

213. The observer for Greece felt that the reference to public awareness contained in the original text of the Romanian proposal should not be dropped but placed elsewhere. She disagreed with the proposed amendment by the United States seeking to replace the words "directed at" by "and in" and suggested a possible alternative formula as follows: "with a view to, in particular".

214. The representative of Cuba said that a number of important elements relating to the concept of human rights education were missing in the Romanian proposal.

215. At the proposal of the Chairman-Rapporteur, further informal consultations were held in order to arrive at a consensus text for a possible new article "X". (See sect. G, below.)

D. Chapter III

Article 1

216. At the 9th meeting, on 20 January 1995, the working group began its consideration of article 1 of chapter III.

217. The Chairman-Rapporteur proposed, for reasons of consistency, deleting the words "with others" in the opening part of the article. The representative of Cuba proposed adding the following phrase at the end of the chapeau:

> "and in conformity with national law and relevant provisions of international human rights instruments freely entered into by States".

218. That proposal was opposed by the delegations of Chile, the United States of America, the Netherlands, the International Commission of Jurists, Canada, Australia and the United Kingdom. Those delegations considered that there was no need to repeat references to national legislation throughout the text of the draft declaration and pointed out that the matter had already been covered by article 2 of chapter V.

219. The representative of Canada, supported by the delegations of Norway and the United Kingdom, proposed deleting, in the chapeau, the words "[universally recognized]".

220. The representative of Mexico expressed his preference for retaining the words "[universally recognized]".

221. The working group was unable to reach agreement on article 1 of chapter III.

Article 3

222. The working group considered article 3 of chapter III at its 9th meeting, on 20 January 1995.

223. The Chairman-Rapporteur proposed, for the sake of consistency, deleting the words "with others" in the first paragraph.

224. The representative of Cuba was in favour of retaining the word "[their]" in the first paragraph.

225. The observer for Amnesty International recalled his proposal made at the previous year's session and accepted by the working group, to delete the word "[their]" in both paragraphs of the article. He noted that that decision of the working group, referred to in paragraph 161 of the report of the working group on its ninth session (E/CN.4/1994/81), was not reflected in the first reading text of the draft declaration, as contained in annex I to document E/CN.4/1994/81.

226. That view was shared by the representatives of the United Kingdom and Chile, while the representative of China said that there had been no agreement to delete the word "[their]".

227. The representative of the United Kingdom proposed deleting the reference to "groups", and to substitute the words "which result in" for "aimed at" in the second paragraph. He also proposed replacing the words "the State" by "any State" in the second sentence.

228. The observer for Turkey was in favour of retaining the words "aimed at", since that wording was taken from article 30 of the Universal Declaration of Human Rights. He proposed substituting the word "States" for "the State" in the second paragraph. That proposal was supported by the representative of Chile.

229. The observer for Amnesty International was in favour of the wording "any State" in the second paragraph. He also proposed substituting the word "shall" for the words "are entitled to".

230. The representative of Cuba proposed placing the words "the State, groups" in square brackets.

231. The working group continued consideration of article 3 of chapter III at its 11th meeting, on 23 January 1995.

232. The Chairman-Rapporteur noted that the tapes of the previous year's session had revealed that the word "their" was deleted from the first paragraph of the article only.

233. The representative of the United States read out a compromise wording of the second paragraph, arrived at during informal consultations. He proposed substituting the words "everyone, individually and in association, is" for the words "persons and groups are" and deleting "[their]", with a view to consistency with the first paragraph.

234. The representative of Cuba insisted on the inclusion of the word "their" or on the retention of "[their]".

235. The observer for Amnesty International noted that retaining "their" would deprive the draft declaration of a great deal of its value. By using such a wording, even currently existing procedures of established human rights bodies would appear to lie beyond the scope of protection of the draft declaration. He also expressed the view that such wording would constitute a denial of the nature and purpose of the work of human rights defenders.

236. The representatives of Australia, Canada, Chile, Mexico and the United Kingdom and the observers for Greece, Norway, Turkey and the International Commission of Jurists referred to the lengthy negotiations that had preceded the present wording of the article, with which they were not satisfied themselves, but which they were none the less prepared to accept in a spirit of compromise. They considered the inclusion of "[their]" absolutely unacceptable.

237. The representative of China and the observer for the Syrian Arab Republic were in favour of retaining "[their]".

238. At its 12th meeting, on 23 January 1995, the working group continued its consideration of article 3.

239. The representative of Cuba proposed the following text for article 3, as an attempt to find a consensus:

> "In this connection, everyone, individually and in association, is entitled to be protected in reacting against or opposing, through peaceful means, activities and acts carried out by the State, groups or persons aimed at the destruction of rights and duties of everyone to strive for the promotion, protection and realization of all human rights and fundamental freedoms."

240. The observer for Turkey proposed amending the Cuban text by replacing the text after the words "the destruction of" by the following text:

> "human rights and fundamental freedoms, as well as the rights and duties incumbent on everyone for the promotion, protection and realization of these rights and freedoms".

241. The Chairman-Rapporteur suggested deleting the words "incumbent on everyone" in the Turkish proposal. The observer for Turkey agreed to that amendment.

242. The representative of Cuba proposed replacing the word "everyone" in the Turkish amendment by the words "all of them".

243. The representative of the United States and the observer for International Service for Human Rights were not satisfied with that formulation.

244. The observer for International Service for Human Rights suggested that the words "to be protected" should be qualified to read "to be legally protected".

245. The observer for Greece suggested, along the same lines, replacing "legally" by "effectively".

246. After informal consultations, the representative of Cuba revised his proposal to read as follows:

> "In this connection, everyone, individually and in association, is entitled to be protected in reacting against or opposing, through peaceful means, activities and acts carried out by the State, groups or persons aimed at the destruction of human rights and fundamental freedoms, duties and responsibilities of everyone to strive for the protection, promotion and realization of all these human rights and fundamental freedoms."

247. The representative of Chile considered the above formulation to be very imbalanced.

248. The representative of the United Kingdom introduced the following proposal, after informal consultations:

> "In this connection, everyone, individually and in association, is entitled to be [effectively] protected in reacting against or opposing, through peaceful means, activities and acts carried out by the State, groups or persons aimed at the destruction of human rights and fundamental freedoms or their activities in striving for the promotion, protection and realization of human rights and fundamental freedoms."

249. The representative of Cuba expressed doubts in respect of the last part of the proposal made by the representative of the United Kingdom.

250. The representative of the United Kingdom revised his proposal by replacing the words "or their activities" by "as well as their activities".

251. The observer for Greece shared the misgivings of the representative of Cuba about the concept of "destruction of activities", implied in the wording proposed by the representative of the United Kingdom.

252. In connection with the proposal made by the United Kingdom, the representative of Mexico expressed his confusion with respect to the word "entitled", since it was not specified who was referred to. He proposed replacing "to be [effectively] protected in reacting or opposing" by "to react against or oppose".

253. The observers for Amnesty International and International Service for Human Rights pointed out that it was essential to provide better protection to human rights defenders under national legislation, which should be in accordance with international standards. They stressed that the right to be protected must therefore be included in that article.

254. The representative of France proposed an alternative phrase: "to be protected in their activities". She also suggested that the concept of legal means of protection be included in the article.

255. The representative of the United Kingdom, in response to the request for clarification by the observer for Greece, agreed that the text of his proposal was ambiguous in the sense that it included both concepts: the element of protection of human rights defenders in carrying out their activities, as well as the notion of protection from the destruction of their activities by the State, groups or persons.

256. The representative of Mexico insisted that the notion of protection should be linked to national law, and referred to his earlier formulation: "protected under national law". In that connection, the observer for Argentina proposed amending the proposal of the United Kingdom delegation to read: "everyone, individually and in association, is entitled to be effectively protected by adequate legal norms".

257. The representative of the Netherlands expressed his preference for a wording such as: "is entitled to legal protection".

258. The Chairman-Rapporteur proposed that the working group adopt the following wording of paragraph 2:

> "In this connection, everyone, individually and in association, is entitled to be effectively protected in reacting against or opposing, through peaceful means, activities and acts carried out by the State, groups or persons, aimed at the destruction of human rights and fundamental freedoms."

He also suggested that paragraph 1 should retain its original wording with the deletion of the word "[their]".

259. The representative of Cuba regretted that the Chairman-Rapporteur's proposal did not meet all of his delegation's concerns and his delegation therefore could not go along with it.

260. The consideration of article 3 of chapter III was therefore suspended.

261. At the 19th meeting, on 27 January 1995, the Chairman-Rapporteur informed the working group that further informal consultations on article 3 were not needed, since no consensus could be established at that stage.

Article 4

262. The working group considered article 4 of chapter III at its 9th meeting, on 20 January 1995.

263. The representative of Cuba reiterated the position of his delegation with regard to article 4 and stated that the nature of the article was controversial, that many of its elements were unacceptable to his delegation and that the article as such posed many problems of all types, including interference in domestic affairs and violations of the purposes and principles of the Charter of the United Nations. In view of those considerations, the article should be deleted.

264. The Chairman-Rapporteur noted that, in view of the position of the Cuban delegation, there was no purpose to be served by going into the details of the drafting of the article, the consideration of which was consequently suspended.

E. Chapter IV

Article 2

265. The working group began consideration of article 2 of chapter IV on its 9th meeting, on 20 January 1995.

266. The representative of the United Kingdom noted that the wording of the article, especially of the chapeau and subparagraphs (a), (b) and (c), was too broad and could be read as allowing for actio popularis, which would be incompatible with the laws of his country which only allowed the individual victim himself to complain. He referred to the second reading proposal made by Germany during the eighth session of the working group (E/CN.4/1993/64, annex III), the adoption of which could remedy that problem.

267. At the 10th meeting, on 20 January, the working group continued its consideration of article 2 of chapter IV.

268. The representative of Cuba proposed amendments to article 2 which were based on the proposals submitted by the delegation of Cuba during the ninth session of the Working Group (E/CN.4/1994/81, para. 202). The amendments were subsequently circulated as CRP.11 (see annex II).

269. In the discussion that followed, the representatives of the United States, Chile, the Russian Federation, Australia and the Netherlands and the observers for Norway and Amnesty International expressed serious difficulties with regard to the Cuban proposals, which they found too restrictive and therefore unacceptable.

270. The representative of Mexico expressed his delegation's support, in general terms, for the amendments proposed by the representative of Cuba. He also submitted an amendment to article 2 which was identical to the proposal made by the delegation of Mexico during the ninth session of the Working Group (E/CN.4/1994/81, para. 203). That amendment, which consisted of proposed new wording for paragraph (f), was later circulated as CRP.6 (see annex II).

271. The representative of China also expressed the support of his delegation for the amendments submitted by the representative of Cuba. He referred to the proposal made by his delegation during the ninth session of the Working Group (E/CN.4/1994/81, para. 206) and reiterated that proposal, which sought to delete in paragraph (e) the words "assistance, including".

272. Referring to the paragraphs proposed by the delegation of Cuba, the representative of Finland, supported by the representative of the Russian Federation, expressed the view that access to international bodies should not depend on whether domestic remedies had been exhausted.

273. The working group was at that stage not able to reach agreement on the second reading text of article 2 of chapter IV. Its consideration was therefore suspended.

274. At its 17th meeting, on 26 January 1995, the working group resumed its consideration of article 2 of chapter IV.

275. The representative of the United Kingdom presented the following compromise text of articles 2 and 2 bis, arrived at during informal consultations:

"To this end, everyone whose rights and freedoms are violated, has the right to:

(a) Complain to and have that complaint promptly reviewed in a public hearing and decided by an independent, impartial and competent judicial or other authority established by law;

(b) Obtain a decision in accordance with law providing redress, including any compensation due as well as enforcement of the decision and award, all without undue delay.

2 bis

"Furthermore, everyone, individually and in association, has the right, inter alia, to:

(a) [Draw public attention to violations of human rights and to] complain about the policies and actions of individual officials and governmental bodies by petitions, reports or other legal means to competent national judicial, administrative or legislative authorities or any other competent authority provided for by the legal system of the State, as well as to any relevant competent international bodies;

(b) Attend relevant hearings or proceedings or, as the case may be, trials to assess their fairness and compliance with national and international standards;

(c) Offer and provide professionally qualified legal assistance, in defending human rights and fundamental freedoms;

(d) Unhindered access to and communication with international bodies with general or special competence to receive and consider communications on matters of human rights in accordance with applicable international instruments and procedures, including those procedures requiring the exhaustion of all available domestic remedies."

276. The representative of Cuba said that that proposal might serve as a basis for further debate, but judged the separation of the article into two separate parts to be confusing. The article should include references to existing procedures, to the exhaustion of domestic remedies and to specification of bodies competent in human rights. His delegation was also in favour of the text of the chapeau as it stood at first reading.

277. The observer for Amnesty International expressed his support for the compromise text. He drew the attention of the working group, however, to the word "whose", in the chapeau, which failed to take into account the fact that human rights defenders usually worked on behalf of victims of human rights violations and were not necessarily victims themselves. He proposed the following text of a new paragraph (c) to be added to article 2:

> "Have the remedies guaranteed in paragraphs (a) and (b) exercised by others on behalf of the victim if the victim is unable to do so effectively."

He was also in favour of reinserting the word "just" in paragraph 2 (b). He stated that article 2 bis (c) should not merely refer to legal assistance, since many important aspects of the work of human rights defenders were of a non-legal nature, for example, social work and providing information.

278. The representative of Mexico pointed out that his delegation had not withdrawn CRP.6. He proposed including the phrase "once the relevant domestic remedies have been exhausted" after the word "bodies" in paragraph 2 bis (d) and deleting the text after the words "and procedures".

279. The observer for Greece supported the compromise text, but proposed deleting the words "and award" in paragraph 2 (b) since, in her opinion, that related to matters of arbitration rather than compensation. She objected to the proposed addition by the representative of Mexico to paragraph 2 bis (d), but was in favour of the proposal for the deletion of the last part of that paragraph. She objected to the proposal made by the observer for Amnesty International for a new paragraph (c) in article 2.

280. A number of delegations supported the proposal to delete the reference to the exhaustion of domestic remedies altogether.

281. The observer for the Islamic Republic of Iran proposed deleting the chapeau, which he considered too subjective in determining whether anyone's rights actually had been violated. In paragraph 2 bis (d), he proposed adding the words "competent in the field of human rights" after "bodies". He supported the Mexican proposal on domestic remedies.

282. The Chairman-Rapporteur agreed with the observer for the Islamic Republic of Iran and proposed that the chapeau be clarified by substituting the words "who claims that their" for "whose".

283. The observer for Amnesty International commented that paragraph 2 bis (d) concerned above all the right to address human rights bodies, the admissibility of any complaint being a different matter altogether.

284. A number of delegations supported the proposals of Amnesty International to add a new paragraph 2 (c), to reinsert "just" in paragraph 2 (b), and not to qualify in any way the type of assistance offered by human rights defenders in paragraph 2 bis (c).

285. The representative of Chile proposed adding, in paragraph 2 bis (c), the words "and social" before the word "assistance".

286. The observer for the International Commission of Jurists regretted that his delegation's proposals, as contained in CRP.16 (see annex II), had not been taken into account, and reintroduced them. He revised paragraph 5 of his proposals by replacing the words "referred to in subparagraphs (a) and (b) above" by "referred to in article 2".

287. The representative of Mexico said that he could agree to qualifying the word "remedies" with the word "effective", as previously suggested by the representative of Finland, but he did consider a reference to domestic remedies necessary.

288. The Chairman-Rapporteur remarked in that connection that it lay beyond the powers of the working group to require the exhaustion of domestic remedies before any access to human rights bodies took place or otherwise to revise the existing international complaints procedures.

289. The observer for the African Commission for Health and Human Rights Promoters said that the wide experience of his organization clearly showed that many countries simply did not have effective domestic remedies or the rule of law. He strongly urged the Working Group, therefore, not to limit access to international human rights bodies in any way and not to qualify the types of assistance provided by human rights defenders, all of which would require the protection to be offered by the draft declaration.

290. At its 18th meeting, on 26 January 1995, the Working Group continued its consideration of the text submitted by the delegation of the United Kingdom and of the other proposals relating to article 2 of chapter IV which had been presented at the 17th meeting.

291. With regard to the proposal of the observer delegation of Amnesty International concerning the addition of a new subparagraph (c) to the first part of the text submitted by the delegation of the United Kingdom (see para. 277 above), the representative of the United States expressed doubts as to whether such a provision would be compatible with national judicial systems. That view was shared by the representative of the United Kingdom. The observer for Amnesty International subsequently modified his proposal by replacing the words "in paragraphs (a) and (b)" by "in accordance with legitimate interests established by the law".

292. The representative of Cuba supported Amnesty International's proposal for a new paragraph (c) of article 2. In order not to limit the scope of human rights violations giving rise to such a right, an explicit reference to civil and political as well as economic, social and cultural rights should be added to that paragraph. In paragraph 2 bis (a), his delegation was in favour of a reference only to bodies that were competent in the field of human rights and of specifying the human rights instruments concerned, and in paragraph 2 bis (b) of spelling out the instruments concerned.

293. The representative of the United Kingdom agreed with the observer for Greece on the deletion of the word "award" in paragraph 2 (b). He said that Amnesty International's proposed paragraph 2 (c) would go well beyond what most legal systems provided for and, furthermore, that the rights referred to in paragraphs 2 (a) and (b) could be exercised by a legal representative who might be paid by a non-governmental organization, and need not necessarily be exercised by the persons in question themselves. To accommodate some of the proposals made, he revised paragraph 2 bis (c) by adding the words "or other" before the word "assistance".

294. The representative of China did not see the need to emphasize all forms of assistance, including unprofessional or even illegal assistance, in paragraph 2 bis (c). He proposed adding a reference, in the chapeau of paragraph 2 bis, to domestic law.

295. The observer for Sweden agreed to the separation of the article, but felt compelled to express a reservation with respect to her Government's compliance with the precise wording of the text, in view of the existence of non-public procedures in the Swedish legal system, especially in the administrative domain.

296. The observer for Amnesty International agreed with the Cuban amendment to its proposal, seeking to include a reference to civil and political, as well as economic, social and cultural rights, in paragraph 2 (c).

297. The representative of the Netherlands proposed deleting the square brackets in paragraph 2 bis (a).

298. A number of participants expressed their support for subparagraphs 5 and 6 of the proposal of the International Commission of Jurists, as contained in CRP.16 (see annex II). The proposal for the inclusion of wording referring to other types of assistance besides the legal assistance mentioned in paragraph 2 bis (c), such as medical assistance, social work and interpretation, also met with support.

F. Chapter V

Article 5

299. At the 10th meeting, on 20 January, the Working Group began its consideration of article 5 of chapter V.

300. The representative of Cuba referred to the proposals made by his delegation during the ninth session of the Working Group (E/CN.4/1994/81, para. 309 and annex II) and reiterated them. The proposals of the delegation of Cuba were later circulated as CRP.12 (see annex II).

301. The representatives of the United States, the United Kingdom, the Russian Federation, Canada and the Netherlands and the observer for Norway stated that the proposals reintroduced by Cuba were unnecessary, restrictive and therefore totally unacceptable to their delegations. Serious reservations to the language and contents of the Cuban proposals were also expressed by the representatives of Chile and Australia, and by the observer for the

International Commission of Jurists, who referred in that connection to the comments made by their delegations in 1994, during the ninth session of the Working Group (E/CN.4/1994/81, paras. 334, 331 and 333, respectively).

302. The representative of Austria, having expressed his rejection of the Cuban amendments, proposed adding a new paragraph 4 to article 5. That proposal was subsequently circulated as CRP.10 (see annex II).

303. The representative of China and the observer for the Syrian Arab Republic supported the proposals made by the Cuban delegation and referred in that connection to the statements made by their delegations during the ninth session of the Working Group (E/CN.4/1994/81, paras. 336 and 335, respectively).

304. The representative of Mexico also said that his delegation would support the Cuban proposals, with certain amendments to be discussed at a later stage.

305. The representative of Cuba considered that the proposals of his delegation were indispensable in order for the text of the draft declaration to be balanced.

306. The representative of Romania reiterated the proposal made by his delegation in 1994, during the ninth session of the Working Group (E/CN.4/1994/81, para. 310). The proposal consisted of adding, at the end of paragraph 3, after the word "freedoms", the following phrase:

> "particularly by contributing to making the public more aware of questions relating to human rights and in carrying out educational, training and research activities in this area directed at furthering understanding, tolerance, peace and friendly relations among nations and amongst all racial and religious groups".

307. The Romanian proposal was supported by the observer for Turkey.

308. The representative of China proposed inserting the words "individually and in association" after the word "Everyone" in paragraph 1 of article 5.

309. The representatives of the United States, the United Kingdom, Canada and Australia and the observer for Norway opposed the proposal by the representative of China. They pointed out that the language of paragraph 1 was taken from the Universal Declaration of Human Rights and any change would introduce into that paragraph a new and extraneous notion.

310. The representative of the Netherlands considered that there was no need at all for article 5 in the draft declaration since the ideas contained therein had already been covered by the Universal Declaration of Human Rights.

311. The working group then suspended its consideration of article 5 of chapter V.

312. At the 19th meeting, on 27 January 1995, the Chairman-Rapporteur informed the working group that no further informal consultations on article 5 of Chapter V were needed since no consensus could be established at that stage.

G. Text "X"

313. The Working Group considered a text "X" at its 15th meeting, on 25 January 1995. (See also sect. C, paras. 203-215 above.)

314. The representative of Romania introduced a proposal of his delegation and those of Chile and Greece concerning the issue of human rights education. Since the place for the article, in the operative part of the draft declaration, was to be determined at a later stage, it was referred to as text "X". It read as follows:

> "Individuals, non-governmental organizations and institutions have an important role in contributing to making the public more aware of questions relating to all human rights and fundamental freedoms through educational, training and research activities in these areas to further strengthen, inter alia, understanding, tolerance, peace and friendly relations among nations and amongst all racial and religious groups."

315. The representative of Cuba proposed the following text, intended as a complement to text "X":

> "Human rights education shall include the teaching of the principles and purposes of the Charter of the United Nations, the Universal Declaration on Human Rights and other international human rights instruments. It shall further include teaching of historical experience of the contributions of all people to the struggle for human rights and the effective elimination of all mass, flagrant or systematic violations of the human rights and fundamental freedoms of peoples and individuals, such as those resulting from apartheid, all forms of racial discrimination, colonialism, foreign domination or occupation, aggression or threats to national sovereignty, national unity or territorial integrity, and from refusal to recognize the right of peoples to self-determination and development and the right of every people to exercise full sovereignty over its wealth and natural resources, and to strive for the elimination of illiteracy, hunger, poverty, maintenance of world peace, including disarmament, and establishment of more equitable international economic relations."

The representative of Cuba furthermore stated that his delegation reserved the right to table further ideas on that matter in the future and that his delegation could support text "X" only if it were adopted at first reading, on the understanding that it could be further discussed at future sessions of the working group. The delegation of Cuba would not insist on any formal decision being taken on its proposal by the working group at the current stage.

316. The Chairman-Rapporteur noted that it could not be assumed that the working group would continue its work for years. He urged all delegations to do their utmost to finalize the draft declaration during the current session of the working group, as requested by the Commission on Human Rights. He added that, technically, the working group had been conducting the second reading of the draft declaration, the first reading of which had definitely

been concluded and could not be reopened. He further noted that the matter of a first or second reading of the draft declaration was not a question of whether a specific proposal had earlier been discussed or not.

317. The representative of the United States did not see a need for the draft declaration to establish any curriculum for human rights education. If any were to be established, it would have to include democracy and free elections, two subjects that he failed to recognize in the Cuban proposal, which he found very selective. Furthermore, he noted a substantive lack of willingness on the part of the Cuban delegation to complete the work on the draft declaration during the current session of the working group.

318. The representatives of Chile, the United Kingdom and Australia and the observers for Norway and the International Commission of Jurists found the proposal and approach of the delegation of Cuba unacceptable also.

319. In response to the preceding statements, the representative of Cuba stated that there existed a lack of willingness on the part of some delegations, including the delegation of the United States, which were trying to exclude from the text any notion of balancing the declaration and which rejected the possibility of discussions on any issues of substance. The representative of Cuba referred, among others, to matters pending in chapter V on the responsibility of individuals, which constituted balancing elements in the declaration.

320. Following informal consultations, the Chairman-Rapporteur concluded that there was agreement to adopt text "X" as proposed by the delegations of Romania, Greece and Chile.

321. The representative of Cuba reiterated his support for text "X", but reserved his country's sovereign right to come back to the issue of education at a later stage, in order to add some elements which were still missing in the draft declaration.

322. The Chairman-Rapporteur stated that, once adopted, the text "X" could not be reconsidered, unless by consensus of the working group.

323. The representative of Mexico proposed replacing, in text "X", the words "through educational, training and research activities" by "through activities such as education, training and research".

324. The Working Group then adopted text "X", as amended by the representative of Mexico. The text read as follows:

> "Individuals, non-governmental organizations and institutions have an important role in contributing to making the public more aware of questions relating to all human rights and fundamental freedoms through activities such as education, training and research in these areas to further strengthen, inter alia, understanding, tolerance, peace and friendly relations among nations and amongst all racial and religious groups."

III. OTHER ISSUES

325. At the 19th meeting, on 27 January 1995, the Chairman-Rapporteur invited all delegations attending the session of the working group to make general statements, if they so wished, on the last day.

326. The observer for Service Peace and Justice in Latin America (SERPAJ) noted with regret the regression of the debate in the working group as compared to former years. He asked the working group, in the interests of human rights defenders, to refer in a clear-cut way to the responsibility and duty of States to protect victims of human rights violations. In his opinion, the draft declaration should build upon already established rights, and should contain a number of minimum standards without which it would not serve its purpose, including the right to freedom of expression, the right to work normally for non-governmental organizations and other human rights groups, the right to communicate with public institutions including the press and media, the right to participate in peaceful activities, to have access to public information, to participate in monitoring a Government's compliance with international obligations, to receive financial contributions irrespective of the country of origin of those contributions and to reparation in cases of violations of human rights. He also stressed that States should adopt administrative, judicial and other measures to protect the activities of human rights defenders, and that state regulations in that area should be in keeping with international human rights standards.

327. The observer for the International Service for Human Rights expressed the support of his delegation for the observations of SERPAJ, as well as for the maintenance of minimum standards for the draft declaration, without which any future declaration might even be detrimental to the functioning of human rights defenders.

328. The observer for Amnesty International fully supported the statement of the observer for SERPAJ. His organization had attended the working group's sessions throughout its existence and regretted that so little progress had been made, despite the efforts of the Chairman-Rapporteur, due to the noticeable lack of political will on the part of one or two States. He identified the following problems faced by the Working Group and expressed his organization's profound regret at their existence: the intention of some States to make all the activities of human rights defenders subject to excessive restrictions contained in domestic legislation, including minor administrative regulations; the intention of setting strict limitations on the possibility of groups or individuals seeking funds outside the countries where they carried out their activities in defence of human rights; the efforts made by some States to impose duties and responsibilities on human rights defenders to make their activities comply with the ideologies predominant in certain countries; the unwillingness shown by certain States to recognize the necessity of international cooperation with non-governmental organizations in monitoring the protection of human rights, and in particular through facilitating the observation of trials; and the unwillingness shown by some States to assume responsibility to protect the rights of human rights defenders. He noted that there was a risk that the working group might forget the object and purpose of the draft declaration, which was, after all,

to protect those who defended human rights and fundamental freedoms. The observer for Amnesty International recalled that during the past two weeks of painstaking negotiations by the working group, his organization had received information from all over the world on human rights defenders who had been arrested, had received death threats, or had suffered physical attacks against themselves and their families. That ongoing situation made his organization determined to obtain a good and strong draft declaration for the purpose of which it would certainly continue to attend the sessions of the working group, should the Commission on Human Rights decide to extend its mandate.

329. The observer for the International Commission of Jurists expressed his opinion that the working group should exercise special caution to ensure that no additional restrictions were inserted into the declaration that could render the declared rights of defenders an illusion. Some of the suggested new restrictive clauses, proposed by one of the participating States, would lead to curtailment of the rights of human rights defenders to a greater extent than was allowed under international human rights law. The work of human rights non-governmental organizations must not be interfered with by States to such a degree that the capacity of such groups to carry out their important activities was annulled. He noted that, though a clear, forceful declaration of rights might be inconvenient for some Governments, the individual human rights defenders at the meeting, as well as others in all parts of the world, had stated plainly that it was an important goal for them. Referring to the list of essential elements for the draft declaration prepared jointly by non-governmental organizations from many countries and referred to in the statement of the observer for SERPAJ, the observer for the International Commission of Jurists commended the list to the attention of States and concerned observers. He recalled that respect for human rights was a clear thermometer of the degree of democracy in a country. In countries where they were able to operate freely as human rights defenders, the work of individuals and of non-governmental groups, organizations and institutions contributed to the strengthening of democratic civil society. He expressed his concern at States selectively deciding which kinds of human rights defenders they would protect. The draft declaration should apply to those who chose to defend any branch of human rights, whether individual economic and social rights, collective rights linked to environmental or development issues, civil and political rights, or other recognized human rights and fundamental freedoms. But it was for the individuals, groups and non-governmental organizations themselves to decide which rights would be the focus of their commitment, energy and resources.

330. The observer for the International Federation of Human Rights recalled the appeal to the international community made by some 200 human rights defenders, representing some 80 human rights organizations, at the thirty-second Congress of his Federation, to guarantee the free exercise of their activities. The words "internal affairs" often hid severe government repression of its citizens and served to preserve the impunity with which government actors continued to violate human rights, as in the case of hundreds of human rights defenders, every year. He noted with regret that some delegations, and that of Cuba in particular, were out to prevent the working group from making any progress.

331. The representative of the United States agreed with previous speakers in judging the draft declaration important if it became an instrument for the protection and empowerment of human rights defenders, rather than for limiting or restricting their work. He was of the opinion that one delegation especially was responsible for the working group's lack of progress, since it had continuously and consistently blocked consensus on numerous compromise proposals and insisted on all its own proposals. The opinion of the representative of the United States was shared by some other delegations.

332. A number of delegations deplored the fact that the balance in the relationship between responsibilities and rights had been upset by continuous references to the sovereign rights of States, whereas those rights were not the subject of the working group's mandate.

333. All speakers agreed that the draft declaration should address the work of human rights defenders with respect to all human rights.

334. The representative of Cuba explained that the drafting process was not to be perceived as a simple exercise to accommodate various and sometimes antagonistic concerns, but as an attempt to deal with problems of substance and their root causes, so as to avoid the creation of an imbalanced declaration which did not respond to the interests of all peoples of the international community. The working group needed to adopt a comprehensive approach in its work and the indivisibility and interdependence of all human rights and fundamental freedoms should be reflected in the operative part of the declaration. Should the declaration only serve to universalize existing imbalances, it would not be acceptable to many countries, including Cuba. The contradictions and inconsistencies which were to be found throughout the declaration necessitated not a technical revision by the secretariat but firm decisions by the working group itself, so as to avoid the risk of numerous and differing interpretations of its content. The representative of Cuba also stressed that rights and responsibilities must be given to all without exception: those who fought against torture, summary executions, disappearances and foreign domination, or for national sovereignty, for the right to development and the right to self-determination, for social justice or better income distribution, a healthy environment or global disarmament. Because responsibilities went hand in hand with rights, the working group must emphasize that all individuals, groups or organs of society must respect all human rights and fundamental freedoms, whilst at the same time having the responsibility to promote, protect and ensure the full realization of all human rights and fundamental freedoms. The inclusion of those elements in the declaration was essential and would ensure a balanced text, because not solely States should be made responsible for violations of human rights. If such a notion of the indivisibility of rights and responsibilities were conveyed in the declaration, it could serve to stimulate everyone to contribute effectively to the promotion of all human rights, instead of limiting activism in the area of human rights to a selected group of individuals or non-governmental organizations. The mandate of the working group required that the declaration promote the participation of everyone in the fight for the full realization of all human rights. The representative of Cuba emphasized his delegation's willingness to continue working towards such a declaration, as long as all challenges in the field of human rights were included therein, however difficult they might be, and as long as it was not

intended to exclude a majority of the world's citizens, namely the poor and the marginalized. The delegation of Cuba was of the opinion that without a clear statement on the responsibilities of individuals, the declaration would contribute little towards the defence, promotion and respect of all human rights.

335. The representative of China recalled that the working group had made progress by adopting two articles and a separate text. It was now in a better position to identify the crux of the problem, to which his delegation saw avenues for solutions. All delegations had shown the good will required for a successful completion of the draft declaration and any lack of progress had not been due to one, or a few, delegations. He believed that the working group was able to say that every effort had been made towards completing a draft declaration which could be implemented by all States.

336. Many delegations expressed regret at the limited progress achieved during the session, but also expressed their willingness to continue the drafting process under the able chairmanship of the Chairman-Rapporteur.

337. The representative of the Russian Federation noted that the positions taken by some States indicated a strong linkage of human rights and political ideology, which was used in large part to obstruct the work of the working group.

338. The representative of Australia said that while all delegations had the right to join a consensus or not to do so, all of them had a responsibility to implement the mandate of the working group, and to do so they should demonstrate more flexibility.

339. The representative of the Netherlands indicated that in the future work the concerns of human rights defenders should be at the centre of the efforts of the working group.

340. The representative of France pointed out that the common denominator of the working group's activities should be the protection of human rights defenders and not the protection of States.

341. The Chairman-Rapporteur expressed his gratitude to all delegations that had participated in the session of the working group and stated that he would try to explain objectively to the Commission on Human Rights why the working group had not been able to conclude its work during the tenth session.

Annex I

FIRST READING TEXT OF THE

DRAFT DECLARATION ON THE RIGHT AND RESPONSIBILITY OF INDIVIDUALS, GROUPS AND ORGANS OF SOCIETY TO PROMOTE AND PROTECT UNIVERSALLY RECOGNIZED HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS

AS AMENDED IN THE COURSE OF THE SECOND READING AT THE TENTH SESSION OF THE WORKING GROUP

Preamble

The General Assembly,

Stressing that all members of the international community shall fulfil, jointly and separately, their solemn obligation to promote and encourage respect for human rights and fundamental freedoms for all without distinction of any kind such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status, and stressing the paramount importance of achieving international cooperation to fulfil this obligation, according to the United Nations Charter,

Recalling the importance of the observance of the purposes and principles of the Charter of the United Nations for the promotion and protection of [universally recognized] human rights and fundamental freedoms for all persons in all countries of the world,

Reaffirming the importance of the Universal Declaration of Human Rights and the International Covenants on Human Rights as basic elements of international efforts to promote universal respect for and observance of human rights and fundamental freedoms and the importance of other human rights instruments adopted within the United Nations system,

Reaffirming further the importance of regional human rights instruments in the international efforts to promote universal respect for and observance of human rights and fundamental freedoms,

Acknowledging the important role of international cooperation for and the valuable work of individuals, groups and associations in contributing to the effective elimination of all mass, flagrant or systematic violations of the human rights and fundamental freedoms of peoples and individuals, such as those resulting from apartheid, all forms of racial discrimination, colonialism, foreign domination or occupation, aggression or threats to national sovereignty, national unity or territorial integrity, and from refusal to recognize the right of peoples to self-determination and the right of every people to exercise full sovereignty over its wealth and natural resources,

Recognizing the relationship between international peace and security and the enjoyment of human rights and fundamental freedoms, and mindful that the absence of international peace and security does not excuse non-compliance,

Reiterating that all human rights and fundamental freedoms are indivisible and interdependent, without prejudice to the implementation of each of these rights and freedoms,

Stressing that each State has the prime responsibility and duty to promote and protect [universally recognized] human rights and fundamental freedoms,

Recognizing the right and the responsibility of individuals, groups and associations to promote respect for, and foster knowledge of, human rights and fundamental freedoms at the national and international level,

Declares:

Chapter I

Article 1

Everyone has the right, individually and in association, to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels. Each State shall adopt such legislative, administrative and other steps as may be necessary to ensure that the rights and freedoms referred to in this declaration are effectively guaranteed. 1/

Article 2

Each State has a prime responsibility and duty to protect, promote and implement all human rights and fundamental freedoms, inter alia by adopting such steps as may be necessary to create all conditions necessary in the social, economic, political as well as other fields and the legal guarantees required to ensure that all persons, individually and in association, are able to enjoy all these rights and freedoms in practice. 2/

Article 3

No one shall participate, by act or failure to act where required, in violating human rights and fundamental freedoms, and no one shall be subject to punishment or adverse action of any kind for refusing to do so. 3/

Chapter II

Article 1

Everyone has the right to know, to be informed about and to make known to others human rights and fundamental freedoms to which they are entitled. 4/

Article 2

Everyone has the right, individually as well as together with others,

(a) To seek, obtain, receive and hold information about these rights and freedoms, including having full access to information as to how these rights and freedoms are given effect in domestic legislative, judicial or administrative systems;

(b) To publish, impart or disseminate freely to others views, information and knowledge of [universally recognized] human rights and fundamental freedoms.

Article 3

Everyone has the right, individually and in association with others, to study, discuss and form opinions as to whether these rights and freedoms are observed, both in law and in practice, [in their own country and elsewhere, and to solicit public attention on these matters].

Article 4

Everyone has the right to develop and discuss new human rights ideas and principles, and to advocate their universal acceptance. 5/

Article 5

1. The State has the responsibility to take legislative, judicial, administrative or other appropriate measures to promote the understanding by all persons under its jurisdiction of their civil, political, economic, social and cultural rights. 5/

2. Such measures shall include:

(a) The publication and widespread availability of national laws and regulations and of applicable basic international human rights instruments; 5/

(b) Full and equal access to international documents in the field of human rights, including the State's periodic reports to the bodies established by the international human rights treaties to which it is a party, as well as the official report of these bodies. 5/

3. The State has the responsibility to take steps to promote and facilitate the teaching of human rights and fundamental freedoms at all levels of education, and to encourage all those responsible for training lawyers, law enforcement officers, the personnel of the armed forces and public officials to include appropriate elements of human rights teaching in their training programmes. 5/

Chapter III

Article 1

For the purpose of promoting and protecting [universally recognized] human rights and fundamental freedoms, everyone has the right, individually and in association with others, at the national and international levels:

(a) To meet or assemble peacefully;

(b) To form, join and participate in non-governmental organizations, associations, or, where relevant, groups;

(c) To communicate with non-governmental or intergovernmental organizations.

Article 2

Everyone has the right, individually and in association with others, to have effective access, on a non-discriminatory basis, to participation in the Government of his country and in the conduct of public affairs. This includes, inter alia, the right, individually and in association with others, to submit to governmental bodies and agencies and organizations concerned with public affairs criticism and proposals for improving their functioning and to draw attention to any aspect of their work which may hinder or impede the promotion, protection and realization of human rights and fundamental freedoms. 6/

Article 3

Everyone has the right, individually and in association with others, to participate in peaceful activities against violations of [their] human rights and fundamental freedoms.

In this connection, persons and groups are entitled to be protected under national law in reacting against or opposing, through peaceful means, activities and acts carried out by the State, groups or persons aimed at the destruction of [their] human rights and fundamental freedoms.

Article 4

1. Everyone has the right [is entitled], individually and in association with others, to solicit, receive and utilize voluntary financial or other contributions, for the purpose of promoting and protecting, through peaceful means, [universally recognized] human rights and fundamental freedoms.

2. In this connection, all contributions, including those from foreign sources, and the use thereof, shall be subject, on a non-discriminatory basis, to the national legislation as referred to in chapter V.

Chapter IV

Article 1

In the exercise of human rights and fundamental freedoms, including the promotion and protection of human rights as referred to in this declaration, everyone has the right to benefit from an effective remedy and to be protected in the event of violations of these rights. 7/

Article 2

To this end, everyone has the right, inter alia, to:

(a) Draw public attention to violations of human rights and to complain about the policies and actions of individual officials and governmental bodies by petitions or other means to competent national judicial, administrative, or

legislative authorities or any other competent authority provided for by the legal system of the State, as well as to any relevant competent international bodies;

(b) Complain to and have that complaint promptly reviewed in a public hearing and decided by an independent, impartial and competent judicial or other authority established by law;

(c) Obtain a just decision and award providing redress, including any compensation due as well as enforcement of the decision and award, all without undue delay;

(d) Attend such relevant hearings or proceedings or, as the case may be, trials to assess their fairness and compliance with national and international standards;

(e) Offer and provide assistance, including professionally qualified legal assistance, in defending [universally recognized] human rights and fundamental freedoms;

(f) Unhindered access to and communication with international bodies with general or special competence to receive and consider communications on matters of human rights in accordance with applicable international instruments and procedures.

Article 3

To the same end, each State shall, inter alia:

(a) Take all necessary steps to ensure the protection by the competent authorities of everyone, individually or in association with others, against any violence, threats, retaliation, de facto or de jure adverse discrimination, pressure or any other arbitrary action as a consequence of their legitimate exercise of the rights referred to in this declaration; 8/

(b) Encourage and support, where appropriate, the creation and development of further institutions for the promotion and protection of human rights and fundamental freedoms in all territory under its jurisdiction, whether they be ombudsmen, human rights commissions or any other form of national institutions; 9/

(c) Conduct or ensure that a prompt and impartial investigation or inquiry takes place whenever there is reasonable ground to believe that a violation of human rights and fundamental freedoms has occurred in any territory under its jurisdiction. 10/

Article 4

Everyone, whether individually or in groups, has the right to the lawful exercise of his occupation or profession. Everyone who, as a result of his occupation or profession, can affect the human dignity, human rights and

fundamental freedoms of others should respect those rights and freedoms and comply with relevant national or international standards of occupational and professional conduct or ethics. 11/

Chapter V

Article 1

Nothing in the present declaration shall be construed as impairing or contradicting the purposes and principles of the Charter of the United Nations nor as restricting or derogating from the provisions of the Universal Declaration of Human Rights, the International Covenants on Human Rights and other international instruments in this field. 12/

Article 2

Domestic law consistent with the United Nations Charter and other international obligations and commitments applicable to the State in the field of human rights and fundamental freedoms, is the juridical framework within which human rights and fundamental freedoms should be implemented and enjoyed, and within which all activities referred to in this declaration for the promotion, protection and effective realization of those rights and freedoms should be conducted. 13/

Article 3

In the exercise of the rights and freedoms referred to in this declaration, everyone, acting individually or in association with others, shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society and in accordance with applicable international obligations and commitments. 14/

Article 4

Nothing in the present declaration shall be interpreted as implying for any individual, group or organ of society or any State the right to engage in any activity or to perform any act aimed at the destruction of the rights and freedoms referred to in this declaration or at their limitations to a greater extent than is provided for in this declaration. 15/

Article 5

1. Everyone has duties towards and within the community in which alone the free and full development of his personality is possible.

2. Everyone, individually and in association with others, should have respect for the rights, freedoms, identity and human dignity of all others, and have respect for the culture of the whole community and the cultures within the community, consistent with human rights and fundamental freedoms.

3. Individuals, groups, institutions and non-governmental organizations have an important role to play and a responsibility in safeguarding and promoting democratic processes, a democratic society, democracy and human rights and fundamental freedoms. This does not imply the right to carry out programmes or to engage in any other activity aimed at the destruction of democratic processes and human rights and fundamental freedoms, including progress accomplished in these areas.

* * *

Text "X"

Individuals, non-governmental organizations and institutions have an important role in contributing to making the public more aware of questions relating to all human rights and fundamental freedoms through activities such as education, training and research in these areas to further strengthen, inter alia, understanding, tolerance, peace and friendly relations among nations and amongst all racial and religious groups. 16/

Notes

1/ Adopted on 18 January 1995 (5th meeting).

2/ Adopted on 19 January 1995 (7th meeting).

3/ Adopted on 19 January 1994.

4/ Adopted on 19 January 1994.

5/ Adopted on 20 January 1994.

6/ Adopted on 21 January 1994.

7/ Adopted on 24 January 1994.

8/ Both the "chapeau" and paragraph (a) adopted on 25 January 1994.

9/ Adopted on 25 January 1994.

10/ Adopted on 28 January 1994.

11/ Adopted on 28 January 1994.

12/ Adopted on 26 January 1994.

13/ Adopted on 26 January 1994.

14/ Adopted on 26 January 1994.

15/ Adopted on 27 January 1994.

16/ Adopted on 25 January 1995 (15th meeting).

Annex II

COMPILATION OF SECOND READING PROPOSALS PRESENTED DURING THE TENTH SESSION OF THE WORKING GROUP

CRP.1 - Chairman-Rapporteur

Preamble

The General Assembly,

Reaffirming the importance of the observance of the purposes and principles of the Charter of the United Nations for the promotion and protection of all human rights and fundamental freedoms for all persons in all countries of the world,

Reaffirming the importance of the Universal Declaration of Human Rights and the International Covenants on Human Rights as basic elements of international efforts to promote universal respect for and observance of human rights and fundamental freedoms and the importance of other human rights instruments adopted within the United Nations system, as well as those at the regional level,

Stressing that each State has the prime responsibility and duty to promote and protect human rights and fundamental freedoms,

Recognizing the right and the responsibility of individuals, groups and associations to promote respect for, and foster knowledge of, human rights and fundamental freedoms at the national and international level,

(Acknowledging the important role of international cooperation .....),

Stressing that all members of the international community shall fulfil, jointly and separately, their solemn obligation to promote and encourage respect for human rights and fundamental freedoms for all without distinction of any kind including distinctions based on race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status,

Recognizing the relationship between international peace and security and the enjoyment of human rights and fundamental freedoms, and mindful that the absence of international peace and security does not excuse non-compliance,

Reiterating that all human rights are universal, indivisible and interdependent and interrelated, without prejudice to the implementation of each of these rights and freedoms,

Declares:

CRP.2 - Chairman-Rapporteur

Preamble

The General Assembly,

Reaffirming the importance of the observance of the purposes and principles of the Charter of the United Nations for the promotion and protection of all human rights and fundamental freedoms for all persons in all countries of the world,

Reaffirming the importance of the Universal Declaration of Human Rights and the International Covenants on Human Rights as basic elements of international efforts to promote universal respect for and observance of human rights and fundamental freedoms and the importance of other human rights instruments adopted within the United Nations system, as well as those at the regional level,

Stressing that all members of the international community shall fulfil, jointly and separately, their solemn obligation to promote and encourage respect for human rights and fundamental freedoms for all without distinction of any kind including distinctions based on race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status,

(Acknowledging the important role of international cooperation .....),

Recognizing the relationship between international peace and security and the enjoyment of human rights and fundamental freedoms, and mindful that the absence of international peace and security does not excuse non-compliance,

Reiterating that all human rights are universal, indivisible and interdependent and interrelated, without prejudice to the implementation of each of these rights and freedoms,

Stressing that each State has the prime responsibility and duty to promote and protect human rights and fundamental freedoms,

Recognizing the right and the responsibility of individuals, groups and associations to promote respect for, and foster knowledge of, human rights and fundamental freedoms at the national and international level,

Declares:

CRP.3 - Chairman-Rapporteur

Chapter I

Article 1

Everyone has the right, individually and in association, to promote and to strive for the protection and realization of all human rights and fundamental freedoms at the national and international levels.

Article 2

Each State has the prime responsibility and duty to protect, promote and implement all human rights and fundamental freedoms.

Article "X"

Each State shall ensure that the rights and freedoms referred to in this Declaration are effectively guaranteed and enjoyed.

CRP.4 - Delegation of the United Kingdom

Chapter I, article 2

Article 2

Each State has a prime responsibility and duty to protect, promote and implement all human rights and fundamental freedoms, inter alia by adopting such steps as may be necessary to create all conditions necessary in the social, economic, political as well as other fields and the legal guarantees required to ensure that all persons, individually, and in association, are able to enjoy all these rights and freedoms in practice.

CRP.5 - Delegation of Cuba

Chapter II, article 2

To add at the end of the chapeau of article 2, chapter II, the following:

"and in the exercise of respect for the purposes and principles of the United Nations, within the framework of national legislation and the Universal Declaration of Human Rights".

CRP.6 - Delegation of Mexico

Chapter IV, article 2

IV.2 (f) Free access, once the relevant internal remedies have been exhausted, to the mechanisms provided for by the applicable international human rights instruments which have general or special competence to receive and consider communications on matters of human rights, and unhindered communication with them, using the established procedures.

CRP.7 - Delegation of Austria

Chapter III, article 1

III.1 (b) To add after the word "associations" the following: "on the basis of their respective statutory rules".

CRP.8 - Delegation of Austria

Chapter III, article 3

Add in the first sentence, after the word "against", the word "apparent".

CRP.9 - Delegation of Austria

Chapter IV, article 2

IV.2 (a) Add after the words "as well as", the words "where appropriate".

CRP.10 - Delegation of Austria

Chapter V, article 5

Paragraph 4 (NEW):

Nothing in this article shall be interpreted as restricting the obligations of States as outlined in international instruments, including the present declaration.

CRP.11 - Delegation of Cuba

Chapter IV, article 2

1. To add, in paragraph (a) before the words "Draw public attention", the following words:

   "Make use of channels and procedures established by the law and other provisions in force in order to";

2. To add at the end of paragraph (a), after the words "international bodies", the words "in the field of human rights, once domestic remedies on the subject have been exhausted.";

3. To delete, in paragraph (c), the word "just" and insert after the word "redress" the words "in accordance with law";

4. To add, in paragraph (d), after the word "attend", the words ", if this is authorized by the rules governing the proceedings followed,";

5. To add, in paragraph (d), after the words "international standards", the words "which are applicable to this procedure";

6. To add, at the beginning of paragraph (e), the following:

   "In accordance with general legal standards in force and specific professional standards applicable in this field,";

7. To add, in paragraph (f), after the words "unhindered access", the words "once domestic remedies on this subject have been exhausted".

CRP.12 - Delegation of Cuba

Chapter V, article 5

Add a new paragraph 4, reading as follows:

"4. To this end everyone has a duty, inter alia:

(a) To refrain from using the promotion and protection of human rights for political purposes extraneous to the humanitarian essence of those activities;

(b) To refrain from encouraging or participating in activities detrimental to the principle of respect for national sovereignty, territorial integrity and non-interference in the internal affairs of States or contrary to the security and stability of the country in which he lives;

(c) To refrain from acts contrary to the right of the people to which he belongs to achieve full self-determination and freely to exercise such self-determination to determine its political status and economic, social and cultural development;

(d) To refrain from any kind of propaganda for war or advocacy of national, racial or any other hatred which constitutes incitement to discrimination, hostility or violence;

(e) To observe the principles of objectivity, impartiality and non-selectivity in carrying out such activities;

(f) To refrain from manipulating information and events with the aim of defaming or damaging the image of other persons and institutions, thereby encouraging smear campaigns;

(g) To refrain from using the promotion of human rights as a way of covering up activities inconsistent with the purpose and principles of the United Nations."

CRP.13 - Delegation of Romania

Chapter V, article 5

Paragraph 3 - add as subparagraph (NEW):

"They (individuals, non-governmental organizations, groups, institutions) have an important role in contributing to making the public more aware of the questions relating to human rights and in carrying out educational, training and research activities in this area, directed at furthering understanding, tolerance, peace and friendly relations among nations and amongst all racial and religious groups."

(This paragraph could also be included elsewhere in the draft declaration.)

CRP.14 - Observer for the International Commission of Jurists

Chapter III, Article 4

Paragraph 1

To insert, at the beginning of the paragraph, the following words:

"In accordance with Article 1 of the present Declaration,".

CRP.15 - Observer for the International Service for Human Rights

Chapter III, article 4

Paragraph 2

To insert, before the word "legislation", the word "fiscal".

CRP.16 - Observer for the International Commission of Jurists

Chapter IV, article 2

1. To insert, in subparagraph (a), before the word "authority", the word "civilian";

2. To insert, in subparagraph (b), before the word "authority", the word "civilian";

3. To add, at the end of subparagraph (e), the following words: ", at the national and international levels.";

4. To insert, at the beginning of subparagraph (f) the word "have" ("Have unhindered access ...");

5. To insert a new subparagraph (g) to read as follows:

> "Have reasonable access to, and reasonable opportunities to examine, and to obtain or copy, the written decisions or reports of the bodies and authorities referred to in article 2";

6. To insert a new article 2 bis to read as follows:

> "Everyone has the right to attend as an international observer public court hearings and trials in any country to assess their fairness and compliance with international standards. It is affirmed that such hearings and trials are required to be public, and may be held in camera only in circumstances prescribed by law and consistent with obligations contained in international human rights instruments."

CRP.17 - Observer for Amnesty International

Chapter V, article 5

Paragraph 3

To add at the end a new sentence to read as follows:

"No such programmes or activities aimed at securing acknowledgement of and accountability for past human rights violations shall be considered as being aimed at the destruction of democratic processes and human rights and fundamental freedoms."

CRP.18 - Observer for the International Commission of Jurists

Chapter V, article 5

Paragraph 3

1. At the beginning of the paragraph, insert the word "States" ("States, individuals, groups, ...");

2. At the end of the paragraph, remove the words "including progress accomplished in these areas".